

1 KEKER & VAN NEST, LLP
DARALYN J. DURIE - #169825
2 DAVID J. SILBERT - #173128
RYAN M. KENT - #220441
3 ALYSE BERTENTHAL - #253012
710 Sansome Street
4 San Francisco, CA 94111-1704
Telephone: (415) 391-5400
5 Facsimile: (415) 397-7188

6 Attorneys for Defendant
GOOGLE, INC., a Delaware corporation
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
11

12 DAVID ALMEIDA, individually and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 GOOGLE, INC., a Delaware corporation; and
17 DOES 1 through 10, inclusive,

18 Defendants.
19
20

Case No. C 08-02088 HRL

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED PURSUANT TO CIVIL
LOCAL RULE 3-12**

21 Pursuant to Civil L.R. 3-12, Google, Inc. ("Google"), defendant in Case No. C08-02088
22 (HRL) ("*Almeida v. Google*"),¹ files this administrative motion asking the Court to consider
23 whether *Almeida v. Google* should be related to the earlier-filed and decided Case No. C 05-
24 02579 ("*Advanced Internet Technologies, Inc. v. Google, Inc.*"), which was consolidated with
25

26 ¹ A copy of the April 22, 2008 Complaint filed in *Almeida v. Google* is attached hereto as Exhibit
27 A ("*Almeida Complaint*") to the Declaration of Alyse D. Bertenthal in Support of Defendant's
28 Administrative Motion to Consider Whether Cases Should Be Related ("*Bertenthal Decl.*").
Pursuant to Local Rule 73-1, Google has concurrently filed a Declination to Proceed Before a
Magistrate Judge.

Case No. C 05-02885 (“*Steve Mizera v. Google, Inc.*”) (collectively “the Consolidated Cases”),² which were pending before the Honorable Ronald M. Whyte.

This case appears to be related to the Consolidated Cases under Civil L.R. 3-12. First, the cases concern “substantially the same parties.” See Civil L.R. 3-12(a)(1). Google is the defendant in all the cases, and the putative class in *Almeida v. Google* likely overlaps with the putative class in the Consolidated Cases (*compare Almeida Complaint ¶ 13 with AIT Complaint ¶ 39 and with Mizera SAC ¶ 39*). Plaintiffs’ counsel and defense counsel in all the cases is the same as well.

Second, “it appears likely that there will be an unduly burdensome duplication of labor and expense . . . if the cases are conducted before different Judges.” See Civil L.R. 3-12(a)(2). All of the cases involve, and require an understanding of, similar subject matter: the AdWords bidding process; the way that ads are displayed on Google and its advertising network; and the manner in which Google charges advertisers for their ads. (*Compare Almeida Complaint ¶¶ 11-13 with AIT Complaint ¶¶ 13-18, 35-38 and with Mizera SAC ¶¶ 13-18, 35-38.*) In addition, the settlement and release that formed the basis of the judgment in the Consolidated Cases may also bar some or all of the claims in *Almeida v. Google*.

For the foregoing reasons, and pursuant to Civil L.R. 3-12, Google respectfully requests that the Court consider whether the pending *Almeida v. Google* action should be related to the previously filed *Advanced Internet Technologies, Inc. v. Google, Inc.* and *Mizera v. Google, Inc.* actions.

² The *Advanced Internet Technologies* case was initially filed by Clicks Defense, Inc., but Advanced Internet Technologies, Inc. was later substituted as the named plaintiff in that case. See Order (Jan. 13, 2006), Dkt. No. 40. A copy of the June 24, 2005 Complaint filed in *Clicks Defense, Inc. v. Google, Inc.* is attached hereto as Bertenthal Decl., Exhibit B (“AIT Complaint”). A copy of the November 22, 2005 Second Amended Complaint filed in *Steven Mizera v. Google, Inc.* is attached hereto as Bertenthal Decl., Exhibit C (“Mizera SAC”).

Dated: June 27, 2008

KEKER & VAN NEST, LLP

By: /s/ David Silbert
DAVID J. SILBERT
Attorneys for Defendant
GOOGLE, INC.

PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker & Van Nest, LLP, 710 Sansome Street, San Francisco, California 94111.

On June 27, 2008, I served the following documents:

(1) ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED PURSUANT TO CIVIL LOCAL RULE 3-12;

(2) DECLARATION OF ALYSE D. BERTENTHAL IN SUPPORT OF DEFENDANT GOOGLE'S ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED PURSUANT TO CIVIL LOCAL RULE 3-12

(1) By **E-MAIL VIA PDF FILE**, by transmitting on this date via e-mail a true and correct copy scanned into an electronic file in Adobe "pdf" format. The transmission was reported as complete and without error; and

(2) By regular **UNITED STATES MAIL** by placing a true and correct copy in a sealed envelope addressed as shown below. I am readily familiar with the practice of Keker & Van Nest, LLP for collection and processing of correspondence for mailing. According to that practice, items are deposited with the United States Postal Service at San Francisco, California on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing stated in this affidavit.

Richard L. Kellner, Esq.
Kabatek Brown Kellner, LLP
644 South Figueroa Street
Los Angeles, CA 90017
Tel: (213) 217-5000
Fax: (213) 217-5010
Email: rlk@kbklawyers.com

Darren T. Kaplan, Esq.
Chitwood Harley Harnes, LLP
11 Grace Avenue
Suite 306
Great Neck, NY 11021
516-773-6090
Fax: 516-876-4476
Email: dkaplan@chitwoodlaw.com

Shawn Khorrami, Esq.
Khorrami Pollard & Abir, LLP
444 S. Flower St., 33rd Floor
Los Angeles, CA 90071
213-596-6000
Fax: 213-596-6010
Email: skhorrami@khorrami.com

Executed on June 27, 2008, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Kay Shida